INDEX

PAGE

Answer to Petition of Fletcher Mills for Writ of Certiorari 1

Argument 6

Exhibit "A" (Docket Entries) 8

Certification 10

TABLE OF CASES

Commonwealth of Pennsylvania, ex rel., Mills v. Baldi, 166 Pa. Superior Court 321 6

ANSWER OF JOHN H. MAURER, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, PENNSYLVANIA, TO PETITION OF FLETCHER MILLS FOR WRIT OF CERTIORARI.

The relator, Fletcher Mills, stands indicted in the State of Alabama, charged with assault with intent to murder one T. R. Terry. Terry had under lease to the relator during the year 1945 a portion of his (Terry's) land, and under the terms of the lease Mills farmed the land and shared the harvest with Terry (N. T. 6 of 10-19-49).

The relator testified (N. T. 6 of 10-19-49) that Terry's cows got into the corn field which he was working and that he asked Terry to help him get the cows out; that an argument followed during which Terry called him (Mills) a black son of a bitch and then commenced beating him over the head. Later (N. T. 19, 10-19-49) Mills testified he was struck on the head with a pickhandle and on page 18 of the same notes of testimony testified he did not receive any medical attention for the injuries sustained as a result of the alleged beating until he arrived in Detroit, Michigan some twenty days later.

Sometime prior to April 4, 1949, the relator, having left Detroit, arrived in Philadelphia where he was, according to his testimony, "picked up by the F. B. I." The docket entries in the United States District Court for the Eastern District of Pennsylvania show that on April 4, 1949 a petition for a writ of habeas corpus was filed by the relator's then counsel, Saul C. Waldbaum, Esquire, said writ being returnable April 18, 1949; that on April 22, 1949, the Court directed that Fletcher Mills, the relator, appear for hearing on May 2, 1949; that on May 31, 1949 a hearing was had and on the same day the petition was dismissed. The docket entries also show that on June 2, 1949, Messrs. Gerber and Galfand, the same counsel who represented

Mills in the Court of Quarter Sessions of Philadelphia County, Pa. and in the Superior and Supreme Courts of Pennsylvania entered their appearance for the relator.

It is not true, therefore, as averred in the relator's petition to this Honorable Court for writ of certiorari (page 8 under heading "Reasons" etc.) that "Between July 7, 1949, and August 12, 1949, the petitioner was under the necessity of procuring counsel * * *." As stated above, the relator had counsel as early as April 4, 1949, and additional counsel as of June 2, 1949.

Printed copy of the certified copy of the docket entries of the United States District Court is attached hereto and marked "Exhibit A."

As the result of the extradition proceedings instituted by the State of Alabama, the Governor of the State of Pennsylvania on April 22, 1949 issued his warrant for the arrest of Fletcher Mills. Mills, however, being confined in prison as the result of his arrest by the Federal Bureau of Investigation on a Federal criminal charge against him could not be taken into custody by the State authorities at that time.

Later, to wit, on July 6, 1949, Mills having entered bail on the Federal charge and released from custody, was arrested on the warrant of the Governor of the State of Pennsylvania.

The matter of the demand of the State of Alabama for the return of Mills to that State and his arrest in obedience to the warrant issued by the Governor of the asylum State, first came to the attention of the District Attorney of Philadelphia County, Pa. in a letter dated July 8, 1949 from Messrs. Gerber and Galfand, counsel for Mills, who as hereinbefore stated, entered their appearance in the United States District Court for the Eastern District of Pennsylvania on June 2, 1949.

On July 15, 1949, the matter came before the Court of Quarter Sessions of Philadelphia County, Pa., no petition for writ of habeas corpus having been filed at the time; it

again came to the attention of the Court on August 5, 1949, as the result of which after a discussion between counsel and the Court, a petition for writ of habeas corpus was filed returnable August 12, 1949.

On August 12, 1949, counsel requested that the matter be continued. This request was refused and hearing was had. At the conclusion thereof the Court of Quarter Sessions of Philadelphia County, Pa. refused the petition, and from this determination of the matter by the Court, an appeal was taken to the Superior Court of Pennsylvania. The return day of the appeal was fixed for the fourth Monday of September, 1949 (September 26th).

Before the return day, however, counsel for the relator on September 14, 1949, filed a petition in the Quarter Sessions Court to correct the record which had been certified to the Superior Court by the Court of Quarter Sessions.

On October 12, 1949, before the Quarter Sessions Court decided the question as to whether the record should be corrected the appeal was listed for argument in the Superior Court. The First Assistant District Attorney of Philadelphia County and counsel for the relator appeared in the appellate court at which time the representative of the Prosecutor's Office requested that the record be returned to the lower court in order to give to the relator and his counsel a further opportunity to procure and produce witnesses. This was agreed to by counsel for the relator.

The statement in relator's petition (page 9) "That the Court below was conscious of this violation (denying relator full opportunity to be heard and present witnesses) is shown by the action of the Superior Court, upon agreement of counsel, in remanding the matter to the Court of Quarter Sessions for further hearing" is entirely without basis in fact. The request for the return of the record to the Court below was made by the District Attorney's representative without any request on the part of the lower Court, and it was done deliberately and advisedly for the express purpose of forestalling the possibility of the oft

repeated and many times unfounded cry that a full opportunity to be heard was not given to the relator.

The order of the Superior Court, dated October 12, 1949, reads as follows:

> "AND NOW, October 12, 1949, upon agreement of counsel the record in appeal (No. 303, October Term, 1949) is remanded to the court below for further hearing and consideration, and upon completion of the record the same shall be returned forthwith to this Court.
>
> Pending argument and disposition of the appeal all proceedings to be stayed. Relator to enter bail in the sum of $1000 for his appearance and compliance with any order of this Court. Argument of the appeal, upon return of the record, will be heard at Pittsburgh sessions beginning November 14, 1949.
>
> By the Court,
>
> Chester H. Rhodes,
>
> P. J."

A letter dated October 12, 1949 from the Prothonotary of the Superior Court was sent to counsel for the relator in which the order of the Superior Court is set forth.

Immediately upon the receipt of a copy of the above letter by the District Attorney of Philadelphia County on October 13, 1949, a notice was delivered by messenger from the District Attorney's Office to Mr. Gerber of counsel for relator. This notice was delivered on October 13, 1949 and not on October 14, 1949 as set forth in relator's petition.

From the date of the delivery of this notice until October 19, 1949, the date fixed for an additional hearing, no request was made to the Court or to the District Attorney that the hearing be fixed for a later date.

The hearing was held and a full opportunity to testify was given to the relator. As on the other dates fixed for hearings, no witnesses were produced to testify on behalf of the relator.

On October 26, 1949, the lower Court by Guerin, J. handed down an opinion dismissing the petition for the writ of habeas corpus and the record was again certified to the Superior Court of Pennsylvania.

On November 14, 1949 the appeal was argued in the Superior Court and on January 12, 1950, the Superior Court by Fine, J. affirmed the judgment of the lower Court, and the record was remitted to the Court below with direction that the relator forthwith surrender himself into custody and that the Governor's warrant be fully carried into effect.

Your respondent prays that the petition for writ of certiorari be denied, and he will ever pray.

JOHN H. MAURER,
District Attorney of Philadelphia County, Pennsylvania,
Attorney for Respondent.

Commonwealth of Pennsylvania }
City and County of Philadelphia } ss.

James W. Tracey, Jr., being duly sworn according to law, deposes and says he is First Assistant District Attorney of Philadelphia County, Pennsylvania, and that the facts set forth in the foregoing answer are true and correct to the best of his knowledge, information and belief.

JAMES W. TRACEY, JR.

Sworn to and subscribed before me this 25th day of April, A. D. 1950.

EDW. H. WHITE, JR.,
(Seal) Notary Public.
My Commission Expires March 9, 1951.

ARGUMENT.

There is absolutely no merit in the relator's contention that he will be subjected to mob violence if returned to the State of Alabama for trial.

After having full opportunity to produce witnesses for the purpose of showing the possibility or probability of his being abused upon his return to Alabama, the relator failed to produce a single witness to testify to that effect. His contention that he will be subjected to mob violence if returned to the State of Alabama rests entirely upon his unsupported word.

On October 19, 1949, the relator testified that after having fled from the scene of his trouble with T. R. Terry, he went to the home of a friend two miles away and that on the next day he returned to his home in the daylight (N. T. 16, 10-19-49) without being molested by anyone. He testified that part of the time in covering the two miles from the home of his friend to his home he walked through the woods, but on one occasion had to cross an open field. It seems very unlikely if he was sought after by those who might do him violence, he was not accosted by them.

In affirming the judgment of the lower Court, Judge Fine in his opinion (166 Pa. Superior Court 321 at 325) stated:

> "The relator's testimony, in summary, disclosed that as a result of a dispute between him and one Terry, during which Terry struck him over the head with a pick-handle, relator stabbed Terry in the arm with a penknife. He further testified that he ran from the scene, not returning to his home until the next day, at which time he saw four or five armed men about his house and overheard them say that they were looking for him and were going to 'stretch his neck.'

He then fled to Birmingham, thence to Detroit, New York and finally to Philadelphia where he was apprehended.

"There is no merit to relator's position that this case is precisely analogous to *Commonwealth, ex rel. Mattox v. Supt. of County Prison,* supra, 152 Pa. Superior Ct. 167, 170, 31 A. 2d 576. There is absolutely no evidence in the case at bar, except relator's own self-serving declarations, that he would be subjected to mob violence or that he would not receive a fair and impartial trial in Tuscaloosa County. The *Mattox* case is thus clearly distinguishable on its facts, for in the *Mattox* case an abundance of such evidence existed. The burden of proof was on the relator to convince the court below of the truth of his averments. That court was not convinced and dismissed the writ. We have examined the record with great care, particularly in light of the dire consequence relator alleged will occur upon his return to the demanding state, and we are satisfied that there was no abuse of discretion or disregard of substantial evidence by the court below. More than four years have elapsed since the commission of the crime charged. There is no evidence that in that four year period, or more particularly within the last six months, there was any mob violence, ill-feeling, lawlessness or abuse or mistreatment of relatives or close friends of the relator. They have continued to live peaceably where the crime was committed. Relator's wife was at home while the four or five men were searching for him; there is no evidence that she was in any way molested, abused or mistreated. On the contrary, the evidence discloses that she continued to live and still lives in Tuscaloosa County without abuse or mistreatment engendered by her husband's crime."

Your respondent therefore prays that the petition for writ of certiorari be denied and he will ever pray.

JAMES W. TRACEY, JR.,
First Assistant District Attorney.
JOHN H. MAURER,
District Attorney, Philadelphia County,
Attorneys for Respondent.

EXHIBIT "A."

IN THE
UNITED STATES DISTRICT COURT.
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, ex rel., FLETCHER MILLS, vs. JOSEPH C. REING, United States Marshal.	Saul C. Waldbaum. Gerber & Galfand for Plaintiff. M-1306.

DOCKET ENTRIES.

April 4, 1949. Petition for a Writ of Habeas Corpus, filed.
April 4, 1949. Order of court directing that Writ of Habeas Corpus issue filed.
April 4, 1949. Writ of Habeas Corpus exit—returnable Apr. 18, 1949.

April 18, 1949. Hearing continued to 5-2-49.

April 22, 1949. Order of Court reducing bail from $5000. to $2000. and directing Fletcher Mills to appear for hearing on May 2, 1949, filed.

April 27, 1949. Return of United States to Writ of Habeas Corpus, filed.

May 31, 1949. Hearing—Eo die: Petition dismissed.

May 31, 1949. Judgment dismissing petition for Writ of Habeas Corpus filed.

June 2, 1949. Appearance of Gerber & Galfand, Esqs., for relator, filed.

June 2, 1949. Notice of Appeal filed 6-3-49 copy to G. A. Gleeson.

June 2, 1949. Copy of Clerk's Notice to U. S. Court of Appeals filed.

June 16, 1949. Writ of Habeas Corpus returned: "On Apr. 18, 1949 executed, etc." and filed.

July 5, 1949. Original record transmitted to U. S. Court of Appeals.

July 6, 1949. Certified copy of Order of U. S. Court of Appeals admitting relator to bail in $2000., received and filed.

July 6, 1949. Bond of Relator in $2000. with surety, filed.

April 6, 1950. Transcript of hearing on May 31, 1949, filed.

April 10, 1950. Supplemental record transmitted to U. S. Court of Appeals.

CERTIFICATION.

Certified Copy D. C. Form No. 30

United States of America } ss.
Eastern District of Penna. }

I, George Brodbeck, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of the original DOCKET ENTRIES in the case of United States of America, ex rel. Fletcher Mills vs. Joseph C. Reing, United States Marshal, No. M-1306, now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Philadelphia, Pa. this 24th day of April, A. D. 1950.

GEORGE BRODBECK,
Clerk.

By J. A. COMEY,
Deputy Clerk.

(Seal)

CERTIORARI

DENIED